IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5654 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STTE OF GUJRAT

Appearance:

1. Special Civil Application No. 5654 of 1997

MR NV ANJARIA for the Petitioners

MR ARCHANA RAVAL, AGP, for Respondents No. 1 to 4.

MR BA VAISHNAV for Respondent No. 5

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/07/2003

ORAL JUDGEMENT

1. The petitioners, who have worked as Seasonal Agricultural Assistants for number of years with the Agriculture Department of the Government, have approached this Court with this petition under Article 226 of the

Constitution of India, seeking the following main reliefs:

"(A) Your Lordships will be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction permanently restraining the respondents from posting, placing and/or appointing on the posts of Agricultural Assistants under the Directorate of Agriculture, Gujarat State, any persons repatriated, surplus or otherwise who are not qualified for appointment to the said post under the Agricultural Assistants (in the Subordinate Agricultural Services) Recruitment Rules, 1986;

(B) Your Lordships will be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to expeditiously proceed in accordance with the letter dated 17.4.1997 written by respondent No.3 herein and further direct the respondents not to fill up the posts of Agricultural Assistant from amongst any unqualified persons in disregard to the claim of the eligible petitioners, the Seasonal Agricultural Assistants;

(C) Your Lordships will be pleased to issue a writ of or in the nature of mandamus or any other writ, order or direction directing the respondents to recall all the unqualified persons not possessing requisite qualifications under the statutory rules and placed on the posts of Agricultural Assistants and be further pleased to fill up such posts in accordance with the statutory rules and in consonance with the process initiated by respondent No.3 reflected at Annexure 'E';

(D) Pending hearing and final disposal of the present Special Civil Application Your Lordships will be pleased to restrain the respondents from repatriating any persons to the post of Agricultural Assistant from the Gujarat Land Development Corporation and be further restrain the

respondents from placing any unqualified persons on the post of Agricultural Assistants under the Directorate of Agriculture, Gujarat State;"

2. Learned Advocate, Mr. Anjaria, appearing for the petitioners has drawn attention of this Court to the Agricultural Assistant (in the Subordinate Agricultural Services) Recruitment Rules, 1986. He submitted that, despite existence of these Rules, the respondent authorities are not making regular recruitments. The petitioners are qualified and eligible candidates for the post of Agricultural Assistants. They have, behind them, strong experience of having worked as Seasonal Agricultural Assistants. Mr. Anjaria submitted that, on one hand recruitment on regular basis is not made and the posts are manned by bringing in candidates from other departments who are not qualified or eligible for the posts. Resultantly, the petitioners, who are qualified, eligible and experienced candidates, are adversely affected. According to Mr. Anjaria, an attempt is made to by-pass or ignore these rules.

3. The petition is opposed to by learned Assistant Government Pleader, Ms. Raval, for respondents No.1 to 4. Respondent 5 is represented by learned Advocate, Mr. Vaishnav.

4. The case of the respondents, as reflected in the affidavit-in-reply filed on behalf of respondents No.3 and 4, sworn by Assistant Director of Agriculture (Cotton), denies the case of the petitioners. However, paragraph 3 of the said affidavit-in-reply is relevant and, therefore, can be quoted thus:-

"3. I say and submit that in Spl. C.A. No.6906/92 which was tagged with Spl. C.A. No.3996/96, Honourable High Court passed an order that, whenever the regular appointment of Assistant Agriculture Officer is made, the petitioners be given preference and they be absorbed by the department. The necessary information is collected from each district and whenever the appointment is made petitioners will be given preference."

5. As per the settled propostion of law, this Court cannot direct the respondent authorities to make recruitments and fill up the posts. However, the problem posed by learned Advocate, Mr. Anjaria, voicing the grievance of the petitioners, if it is correct, it does

call for attention and proper redressal at the hands of appropriate authorities of the respondent. Although the petition cannot be entertained for the prayers made in the petition, in exercise of powers under Article 226 of the Constitution of India, while dismissing this petition, it would be appropriate, if the petitioners are directed to make a representation to respondent No.1, who can examine their grievance and take appropriate steps for their redressal in accordance with law. Order accordingly. The petition stands dismissed with the above observations. Rule is discharged. No costs.

[A. L. DAVE, J.]
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